[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., MILLS & HORNE, JJ.

June 17, 1938.

REX v. WONG KIANG CHIN.

[SINGAPORE CRIMINAL APPEAL No. 12 of 1938.]

Penal Code, S.489-B—Forged currency note —Criminal Procedure Code, S.428—Admissibility of Certificate.

S. 428 of the Criminal Procedure Code as amended by the Treasury Officers (Titles and Powers) Ordinance 1938 allows a certificate signed by the Chairman of the Board of Commissioners of Currency to be admitted in evidence in criminal proceedings when it is necessary to decide whether a currency note is or is not forged, but the requirements of this section must be strictly observed before such certificate can be admitted in evidence.

The jury are not allowed to judge for themselves in such a case whether or not the notes are forgeries as to do so would confuse the functions of a juror with that of a witness and the fact such notes are forgeries must be strictly proved at the trial.

CRIMINAL APPEAL.

Howe, Crown Counsel for the Crown.

Cur. Ad. Vult.

The judgment of the Court of Criminal Appeal was read by—

McELWAINE, C.J.—The accused was convicted at the March 1938 Assizes at Singapore of the offence of having had in his possession on the 10th day of January 1938 forty nine forged ten-dollar Straits currency notes, knowing them to be forged and intending to use the same as genuine and was sentenced to four years rigorous imprisonment.

The appellant was arrested in a coffee shop with the forty nine notes in a bundle of white paper in his pocket and was charged with possession of the forged notes.

Inspector Byrde who found the notes in the appellant's pocket brought them on 11th January to the Treasury and handed the notes to the shroff for a report.

The following day Inspector Byrde went to the Treasury and received a report which was put in as an exhibit and was the only evidence tendered by the Crown to shew that the notes were forged.

The report reads as follows:—

> "The Treasury,
>
> Singapore 11th January, 1938.
>
> I hereby certify that the forty-nine (49) pieces of $10/- notes produced by Inspector L. W. Byrde, Commercial Crime Sub-Branch, Detective Station, Singapore to-day at the Treasury are forged notes. The numbers on the notes are as follows:—

B/1	12330,	12330,	12334,	12336,
	12337,	12342,	21342,	21344,
	12337,	21348,	21349,	21350,
	32152,	32153,	32156,	76134,
	76134,	76138,	76138,	76139,
	76140,	76142,	72161,	72162,
	72163,	87143,	87143,	98571,
	98572,	98575,	98576.	
B/4	43611,	43612,	43613,	43615,
	43619,	43620,	43620,	43620.
B/7	53320,	53321,	53322,	53323,
	63331,	64333.		
B/21	12336,	21347,	32154,	76141.

> Sd. R. Bird.
>
> For Financial Secretary."

This report was put in evidence under section 428 of the Criminal Procedure Code which at the date of the report read as follows:—

> "Where in any criminal proceeding it is necessary to decide whether a currency note is or is not forged, a certificate signed by the Treasurer that he is satisfied by personal examination that such note is or is not forged, shall be conclusive evidence that such note is or is not forged, as the case may be, and neither the Treasurer nor any officer of his department shall be cross-examined with regard to the contents of such certificate unless the Court otherwise orders."

The appellant was committed for trial on 7th March 1938. On the 11th March 1938 the Treasury Officers (Titles and Powers) Ordinance 1938 came into force. This Ordinance substituted "Chairman of the Board of Commissioners of Currency" for "Treasurer" in Section 428 of the Criminal Procedure Code.

The trial at Assizes commenced at 11.45 a.m. on 19th March 1938 and finished at 12.55 p.m. the same day.

There was no evidence before us as to whether there is a "Chairman of the Board of Commissioners of Currency" or who the person is who occupies that post.

But even if we were to assume that "Treasurer," "Financial Secretary" are different names for the same officer—and we do not think that they are, the certificate was not admissible in evidence. The report is signed "for Financial Secretary" and it does not state that the writer was satisfied by personal examination that the notes were forged.

Section 428 of the Criminal Procedure Code must be strictly observed before a certificate under it can be admitted in evidence. The section is for obvious reasons a very drastic departure from the usual rules of evidence. The certificate under it is conclusive and cross-examination with regard to the certificate is not

permitted save with the permission of the Court. It is unlikely that a Court would permit cross-examination tending to disclose secret marks or indicia which experts know to look for on genuine notes.

The legislature has therefore placed this grave responsibility of certifying as to the genuineness or otherwise of currency notes on a very senior officer who is expected by knowledge and experience to be so expert in the detection of forgery that his certificate is to be accepted in a Court of law. He cannot delegate that responsibility. The Certificate was not one allowed by law to be admitted in evidence and it should have been rejected and not shewn to the jury.

It was suggested in argument before us that the Jury saw the notes and could judge for themselves that the notes were forgeries. We think this a dangerous and unsound suggestion.

In the first place we do not know whether the jury examined the notes and formed their own opinion from this examination that the notes were forged or whether they concluded that the notes were forged because the report, which should not have been in evidence, stated that they were forged.

In the second place, even if it were shewn that the jury examined the notes and found them to be forgeries, there would be nothing on the record to shew on what evidence they so found. While a juror may apply to the subject before him that general knowledge which any man may be supposed to have we doubt if that is sufficient for the detection of forgeries which sometimes deceive even officers of a bank.

The notes did not speak for themselves. Treating the report as rejected no testimony was on record to indicate that they were forged. The jury may accept opinions given in evidence but in this case opinion was properly put in evidence and there was no opportunity to cross-examine any witness or any juryman upon the reasons which led him to the conclusion at which he had arrived.

A juryman should not be regarded as a witness unless he gives evidence and is subject to cross-examination as provided in section 209 of the Criminal Procedure Code. Notwithstanding that section and the precaution it prescribes it is undesirable that a juror should be a witness, for the simple reason that he can hardly be deemed capable of impartially considering in his capacity as a juror, whether his evidence is negatived by contrary evidence, or what weight or importance should be attributed to it.

The function of a juror is wholly incompatible with that of a witness, and the suggestion of the Crown amounts to this that the jurors—if they examined the notes—are to be regarded as witnesses whose opinions the same persons in their capacity as jurymen accept.

The notes may have been forgeries but the fact that they were forgeries was not proved at the trial.

The appeal is therefore allowed.

The appellant did not claim ownership of the notes which consequently will be handed over to the police who will dispose of them by arrangement with the Accountant-General if they are not claimed before the 1st day of August 1938.

Appeal allowed.

[CRIMINAL REVISIONAL JURISDICTION]

HOWES, J.

July 6, 1938.

REX v. THONG CHUNG CHONG & 10 ORS.

[PENANG CRIMINAL REVISION No. 20 of 1938]

Common Gaming Houses Ordinance (Cap. 30), s. 6 (2)—playing in a gaming house—presumption—rebuttal—degree of proof.

Held, that a very slight degree of proof is required to prove that a place is not a place kept or used for gaming to which the public has or may have access and that if members of the public are on premises, where gaming is in progress, for legitimate business and not for the purpose of gaming the presumption under Section 6 (2) of the Common Gaming Houses Ordinance (Cap. 30) does not apply or is rebutted.

CRIMINAL REVISION.

Hughes, Crown Counsel, for the Crown.

Ross, for the respondents.

The facts sufficiently appear from the judgment.

Cur. Ad. Vult.

HOWES, J.—In this case, the seven Petitioners, together with three other persons, were convicted on a charge that they on or about 17th May, 1938, at 3 p.m. did play in a common gaming house, namely Elysee Hotel, and thereby committed an offence punishable under Section 6 (1), Chapter 30. One other person was similarly charged, but was acquitted.

This case comes before the Court in its revisional capacity; as since the fine imposed by Section 6 does not exceed $25/-, there is no right of appeal.

The place in which the playing is alleged to have taken place was an office adjoining the garages of the Elysee Hotel. A portion of this office was screened off by two almeirahs, and in this portion was a table and five chairs, on one of which, at the time of the raid, according to Inspector McLennan, Accused No. 2, a "boy" employed by the Hotel, was sitting when the Inspector entered.